PETER SZANTO 949 887 2369
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United States District Court

Northern District of California

San Francisco Division - 450 Golden Gate Avenue, San Francisco CA 94102

CV 10 1364 EMC

Peter Szanto, an individual,
Removing Party

vs.

Szanto Revocable Trust of 1991,
Original Petitioner's in the
Underlying Action

** JURY is REQUESTED **

USDC # 1364

Notice of Removal

from Superior Court of California in San Mateo County Case: PR 115212

Plaintiff requests there be no magistrate assignment herein

A Federal Question Under 42 U.S.C.A. § 1983 and Pendent Jurisdiction Under 28 USC 1331

Assigned to: Hon

FILED 2010 MAR 31 P 12:29

E-filing

1. Plaintiff Peter Szanto, the removing party, is an individual, over 18 years of age and a citizen of California.

ORIG FILE

2. The putative trustees of the Szanto Revocable Trust of 1991 began an action (PR 115212, the action being removed herein) [EXHIBIT A] and have undertaken various fraudulent transfers of real and personal property in furtherance of their efforts at an end run to avoid probate of the Szanto estate.
3. The California Court of Appeal has already once weighed Putative trustees efforts and has recognized them as an improper use of the rules of probate [EXHIBIT B – page 9 – 3rd ¶]: "We confess we are perplexed as to why [putative trustees] refer to their lower court petition as a *Heggstad* petition."
4. Including the above enumerated action, the putative trustees and potential heirs of the Szanto estate have falsely, improperly and callously manufactured and maintained 7 (seven) barratricious actions against Peter Szanto. Six have been resoundingly defeated by Peter Szanto. And Peter Szanto (by giving money to his daughter) compromised one action.
5. The putative trustees counsel Peter Kurt Peterson, Edward Donald Thirkell, Robert Samuel Lewin, Julia Eva Lingys, Kenneth Howard Horowitz, Katharina Nina Reynolds, all members of the State Bar of California, officers of the courts of California, are state actors. Removing party has commenced an action under 42 USC 1983 against those person in USDC - CDCA (CV 10 2263) [EXHIBIT C].
6. During the course of the Szanto series of cases, counsel for putative trustees, have sought on 5 separate occasions, in various California

counties to have Peter Szanto deemed a vexatious litigant. Each effort has failed, because courts have recognized that Peter Szanto has merely defended his rights in conformance with the rules and with utmost respect for law and procedure.

7. During the course of their vexatious litigant efforts counsel for putative trustees have used their status, standing and privilege as officers of the courts of California seeking to invade Peter Szanto's privacy and to steal his identity to obtain personal confidential information from the files of various courts.

8. On March 1, 2010 (within 30 days of the date hereof), putative trustees began their sixth effort to deem Peter Szanto a vexatious litigant [EXHIBIT D]. The most egregious falsity in this most recent effort is that the vexatious litigant statutes are focused on persons who initiate actions. Here, Peter Szanto did not initiate action PR 115212.

9. Putative trustees sole and only reason for bringing the vexatious litigant application is to characterize Peter Szanto in such a manner as to engender and create bias against him as though he were ridiculous – and thereby create the inference that the positions he advocates are without merit. However, **The law in California is that cases be adjudicated on all their merits**!! *Rappleyea v. Campbell* (1994) 8 Cal.4th 975.

10. The 28 USC 1446 grounds for removal are as follows (b) ---2nd ¶:

"If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of a .... motion.... from which it may first be ascertained that the case is one which is or has become removable."

10. Here, removal is warranted, because the entirety of the Szanto series of cases have now become focused on putative trustees and their counsel depriving Peter Szanto of civil rights by abuse of the laws of California, by attempting to focus the series of cases on **any other** issue than putative trustees improper purloining of the estate of Peter Szanto's parents.

11. The elements of a civil action under 42 USC 1983 have two essential proof requirements: (1) that acting under color of state law conduct is committed by state actors that deprive petitioner of civil rights , and (2) that the conduct deprived the claimant of some right, privilege, or immunity protected by the Constitution or laws of the United States.

12. Here, Peter Szanto alleges that putative trustees and their counsels' intentional conduct has deprived him of his ability to redress his grievances regarding his parents' estate trust as guaranteed by *U.S. Constitution*, Amendment 1.

13. 42 USC 1983 creates a cause of action based on personal liability and predicated upon fault; thus, liability does not attach unless the individual caused or participated in a constitutional deprivation. Peter

Szanto alleges that the putative trustees and their counsel, jointly and severally, used their status, standing and privilege as officers of the courts of California to work a deprivation of Peter Szanto's fundamental rights.

14. Had putative trustees and their counsel not been able to use the color and prestige of their office to obtain special treatment before the courts, they would have been unable to work that deprivation.

15. Here the entirety of the Szanto series of cases seek Federal pendent jurisdiction because of the existence of substantial federal claims that now make it imperative that the entire of the action be heard based on claims arising from a common nucleus of operative facts. *Nicol v. Imagematrix, Inc.*, (1991) 767 F.Supp. 744.

16. Jurisdiction is appropriate in California, because all parties to this action are California citizens. Jurisdiction is appropriate in this USDC division, because the case is in San Mateo County. Jurisdiction is appropriate in this Court because all of the matters occurred in California. Jurisdiction is appropriate because all of the defendants are officers of the state courts of California and therefore it would be improper to ensue in the forum wherein the defendants are officers.

17. Peter Szanto also seeks damages for the violations of 42 USC 1983 in the amount of $1,500,000.oo,the approximate amount of legal fees he has expended defending himself and his lost income during that time the Szanto series of case have been unnecessarily protracted.

18. Peter Szanto seeks such other and further relief as this Court may

deem appropriate .

19. Trial by jury in this action is requested.

Verification

My name is Peter Szanto, I am the plaintiff in this action. I personally prepared and read this petition for removal and I know its contents. All matters herein are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

March 29, 2010 ________________ Peter Szanto

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3/16/06

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Attorney for Paul Szanto and Victor Szanto,
Co-Petitioners

FILED
SAN MATEO COUNTY
MAY 17 2006
Clerk of the Superior Court
By ______ DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

In Re the Matter of THE PAUL and KLARA SZANTO REVOCABLE TRUST dated March 19, 1991 restated on October 5, 2005	Case No.: 115812 PETITION FOR ORDER CONFIRMING TRANSFER OF TRUST ASSET (Probate Code §17200.1) Date: JUN 19 2006 Time: 9 am Place: 14

Petitioners Paul Szanto and Victor Szanto, allege that:

1. PAUL SZANTO and KLARA SZANTO executed the PAUL and KLARA SZANTO REVOCABLE TRUST dated March 19, 1991 restated on October 5, 2005 (hereinafter, the "Trust") which is attached hereto and incorporated as Exhibit "A". Such Trust restatement names the Petitioner VICTOR SZANTO and ANTHONY SZANTO as Co-Trustees; and also names both Petitioners and ANTHONY SZANTO to serve at the death or incapacity of Klara Szanto.

2. On December 31, 2005, PAUL SZANTO executed an AMENDMENT NUMBER ONE TO THE PAUL AND KLARA SZANTO REVOCABLE TRUST dated December 31, 2005 (hereinafter, the "Amendment") which is attached hereto and incorporated as Exhibit "B". Such Amendment removed ANTHONY SZANTO as Trustee from THE PAUL and KLARA SZANTO REVOCABLE TRUST dated March 19, 1991 restated on October 5, 2005. The Petitioners remain as Trustees to serve at the death or incapacity of Klara Szanto.

EXHIBIT A

3. KLARA SZANTO died on December 5, 2005, a resident of San Mateo County. A copy of KLARA SZANTO's death Certificate is attached hereto and incorporated herein as Exhibit "C".

4. On September 15, 2004, Grantors, "PAUL SZANTO and KLARA SZANTO, as husband and wife, as Joint Tenants," executed a Grant Deed transferring title to the real property at 105 Baywood Avenue, Hillsborough, CA, A.P.N. 032-422-130, (herein, the "BAYWOOD PROPERTY") to the Grantees "PAUL SZANTO and KLARA SZANTO, as Trustees of the PAUL and KLARA SZANTO REVOCABLE TRUST UNDER REVOCABLE TRUST DECLARATION DATED MARCH 19, 1991, AS AMENDED." This Grant Deed is dated September 15, 2004 and was recorded September 24, 2004, at 1:12p.m., Document Number 2004-192684 with the San Mateo County Clerk-Recorder. A copy of the BAYWOOD PROPERTY Grant Deed is attached hereto and incorporated as Exhibit "D."

5. On August 31, 2005, Grantors, "PAUL SZANTO and KLARA SZANTO, as Trustees of the PAUL and KLARA SZANTO REVOCABLE TRUST under revocable trust declaration dated March 19, 1991," transferred to "PAUL SZANTO and KLARA SZANTO, Husband and Wife, as Joint Tenants" all of their interest to the property at 105 Baywood Avenue, Hillsborough, CA, A.P.N. 032-422-130. This Trust Transfer Deed was recorded by the San Mateo County Clerk–Recorder on September 22, 2005 at 1:00p.m., Document Number 2005-165886. A copy of the Trust Transfer Deed is attached hereto and incorporated as Exhibit "E", (hereinafter, "BAYWOOD PROPERTY").

6. In compliance with the request of the mortgage company, title to the BAY WOOD PROPERTY was changed to Joint Tenancy by PAUL SZANTO and KLARA SZANTO solely for the purpose of refinancing. It was the understanding of the Grantors, Paul Szanto and Klara Szanto that their property was to be retitled back to their trust once the financing was in place.

16 Cal App 4th 943

7. In Estate of Heggstad, 20 Cal Rptr. 2d., 1993, the Court affirmed Judge Shelton's Order that assets listed on a schedule attached to a trust instrument was sufficient to transfer such assets to the Trust. The Court recognized that a written statement by the transferring assets to the

Settlor as Trustee or to another as Trustee is sufficient to accomplish such transfer. The BAYWOOD PROPERTY Grant Deed states that PAUL SZANTO and KLARA SZANTO transferred title of 105 Baywood Avenue, Hillsborough, CA A.P. N. 032-422-130, to "PAUL SZANTO AND KLARA SZATNO, as Trustees of the PAUL and KLARA SZANTO REVOCABLE TRUST." The BAYWOOD PROPERTY Trust Transfer Deed transferred title to them as "PAUL SZANTO and KLARA SZANTO, husband and wife, as Joint Tenants," strictly to refinance. Title did not transfer the property to another party other than themselves. The Petitioners therefore request this Court to confirm that their real property at 105 Baywood Avenue, Hillsborough, CA, A.P.N. 032-422-130, set forth in BAYWOOD PROPERTY Grant Deed to be deemed to be an asset of the Trust.

In Section 2.3 of the Will of the Decedent, all property of the Decedent is to be distributed to the Trust. The Grant Deed to the BAYWOOD PROPERTY states the full title to PAUL SZANTO AND KLARA SZANTO, as Trustees of the PAUL and KLARA SZANTO REVOCABLE TRUST UNDER REVOCABLE TRUST DECLARATION DATED MARCH 19, 1991, AS AMENDED. Therefore, the BAYWOOD PROPERTY is by instruction of the Will to go to the Decedent's Trust. Confirming the Decedent's interest to the Trust carries out the intent of the Decedent and avoids the expense of Probate. A copy of the Will of the Decedent is attached hereto and incorporated as Exhibit "F", (hereinafter, "Will of Klara Szanto Dated September 15, 2000").

8. If the Court does not approve the transfer of property to the Trust, the Petitioners will initiate a probate. The Will of Klara Szanto leaves all assets to the Trust. Therefore the property will still pass to the Trust but through the provisions of the Will [Probate Code §13651(b)]. Pursuant to Section 2.3 of the Will (Exhibit "F"), the Trust is the beneficiary of the Will. This will result in additional expense to the Trust.

WHEREFORE, Petitioners pray for an Order of this Court:

1) Confirming the Decedent's and Petitioner Paul Szanto's interest in 105 Baywood Avenue, Hillsborough, CA to the Trust.

2) Such other acts the Court deems necessary.

Dated: May 13, 2006
Red Bluff

Paul Szanto, Trustee of the PAUL and KLARA SZANTO REVOCABLE TRUST dated March 19, 1991 restated on October 5, 2005

Dated: May 13, 2006
Red Bluff

Victor Szanto, Trustee of the PAUL and KLARA SZANTO REVOCABLE TRUST dated March 19, 1991 restated on October 5, 2005

VERIFICATION

I, PAUL SZANTO, am the Petitioner in the above entitled action; I have read the foregoing PETITION FOR ORDER CONFIRMING TRANSFER OF TRUST ASSETS (Probate Code §17200.1) and know the contents thereof; and I certify that the same is true of my own knowledge; except as to those matters which are therein stated upon my information and belief, and as to those matters I believe it to be true.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this May 13, 2006 at Red Bluff, California.

[signature]

Paul Szanto

I, VICTOR SZANTO, am the Petitioner in the above entitled action; I have read the foregoing PETITION FOR ORDER CONFIRMING TRANSFER OF TRUST ASSETS (Probate Code §17200.1) and know the contents thereof; and I certify that the same is true of my own knowledge; except as to those matters which are therein stated upon my information and belief, and as to those matters I believe it to be true.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this May 13, 2006 at Red Bluff, California.

[signature]

Victor Szanto

COPY

Filed 3/11/08

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

Court of Appeal, First Appellate District
FILED
MAR 1 1 2008
Diana Herbert, Clerk
by ______________ Deputy Clerk

Estate of KLARA SZANTO, Deceased.

PETER SZANTO,
Appellant,
v.
PAUL SZANTO et al..,
Respondents.

A116147

(San Mateo County
Super. Ct. No. 115212)

I. INTRODUCTION

Klara Szanto died on December 5, 2005. Thereafter, Klara's husband Paul and their son Victor filed a petition to confirm that Klara and Paul's home in Hillsborough (the Hillsborough property) was an asset of the Paul and Klara Szanto Revocable Trust (the Szanto Trust). Peter Szanto, another son of Klara and Paul, responded by filing a petition under Probate Code section 21320 (section 21320), pursuant to which he sought declaratory relief that he could oppose the trust asset petition without violating a "no contest" provision in Klara's will.[1] The probate court filed an order confirming that the Hillsborough property was a trust asset and denying Peter's section 21320 petition. We reverse the part of the order confirming that the Hillsborough property is a trust asset but otherwise affirm.

EXHIBIT B

[1] Because the parties and the decedent all share the same last nam[e] to these individuals by their first names.

II. STATEMENT OF FACTS

A. *The Trust Asset Petition*

On May 17, 2006, respondents filed a Petition for Order Confirming Transfer of Trust Asset. According to the petition, Paul and Victor are co-trustees of the Szanto Trust, pursuant to the operative trust document which is dated March 19, 1991, Restated on October 5, 2005.

The petition sets forth the following allegations regarding Paul and Klara's Hillsborough property. On September 15, 2004, Paul and Klara executed a grant deed transferring title to the real property from themselves "as husband and wife, as Joint Tenants," to themselves as trustees of the Szanto Trust. On August 31, 2005, Klara and Paul, as trustees of the Szanto Trust, transferred all of their interest in the Hillsborough property to themselves as "Husband and Wife, as Joint Tenants." The August 31, 2005, transfer was made to comply with the request of a mortgage company "solely for the purpose of refinancing," and both Paul and Klara understood that "their property was to be retitled back to their trust once the financing was in place." The petition does not address why a formal transfer was not accomplished prior to Klara's death.

Respondents sought an order, allegedly pursuant to *Estate of Heggstad* (1993) 16 Cal.App.4th 943 (*Heggstad*), that the Hillsborough property is an asset of the Szanto Trust. Respondents further alleged that Klara's will, dated September 15, 2000 (the 2000 will), provides that all her property be distributed to the Szanto Trust. Therefore, respondents alleged, granting their "*Heggstad* petition" would effectuate Klara's intent and avoid the expense of a probate. Respondents stated that, if their petition was denied, they would initiate probate in which case Klara's interest in the Hillsborough property would pass to the Szanto Trust, but at "additional expense to the Trust."

B. *Peter's Request for a Continuance*

A hearing on respondents' trust asset petition was scheduled for June 19, 2006. On June 1, 2006, Peter filed, pro per, an ex-parte request for a continuance.[2] Peter argued the petition was deceptive on its face and that he needed additional time to explore the relevant issues and determine the potential impact of the respondents' proposed actions. Peter also argued that respondents' petition could affect his rights in an action he had filed against his parents and the Szanto Trust in the federal district court in Nevada. According to Peter, there was a pending motion to dismiss the Szanto Trust from the federal action and, if that motion was granted and the trust asset petition in this case was also granted, then Paul and Klara's most valuable asset would not be available to satisfy any potential judgment he might obtain. According to Peter, the Hillsborough property is valued at approximately $12 million.

The appellate record reflects that Peter's ex parte request for a continuance was denied, although the details pertaining to that determination are not available to us.

C. *Peter's First "Response" to Respondents' Petition*

On June 14, 2006, Peter filed, again pro per, a pleading which was referenced as a "Response" to the trust asset petition, accompanied by a citation to section 21320. In this short document, Peter alleged he is a beneficiary of the Szanto Trust "as published on September 26, 1996," and he sought declaratory relief that filing an opposition to the trust asset petition would not constitute a will contest within the meaning of section 21320.

A hearing on the trust asset petition commenced on June 19, 2006, before the Honorable Robert D. Foiles. At the hearing, Peter requested additional time so he could "prepare an opposition under the safe harbor protection of 21320." Respondents objected to a continuance and further argued that Peter had failed to show how or why section

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[2] That same day, Peter filed a request that the Honorable Rosemary Pfeiffer be disqualified from sitting as a judge in this case on the ground she had "previously demonstrated unreasonable bias" against Peter in an unrelated child support action. Although disagreeing with the factual basis for this request, Judge Pfeiffer recused herself in order to further the interests of justice.

21320 could be applied here. Over respondents' objection, the court granted Peter a continuance so that he could file a proper petition under section 21320.

D. ***Peter's Second Response and Petition***

On June 21, 2006, Peter filed a pleading captioned as "1. Response to Petition for Order Confirming Transfer of Trust Asset 2. Petition for Declaratory Relief 3. Points and Authorities in Support of Declaratory Petition." The stated purpose of Peter's pleading was as follows: "The intent of this petition is to seek a declaration from this Court as to one matter only. A declaration pursuant to Probate Code § 21320 that if petitioner contests the present Petition for Order Confirming Transfer of Trust Asset, that contest would be no 'will contest' within the meaning of either of the wills of Klara Szanto as published on September 26, 1996 (Exhibit 2) or as published on September 15, 2000 (Exhibit 3)." Peter alleged that he was entitled to a section 21320 declaration because he is a beneficiary of the Szanto Trust.

Peter maintained that his mother had left two potentially valid wills, the 2000 will referenced in respondents' petition and an earlier will, executed on September 26, 1996 (the 1996 will). Peter did not acknowledge the validity of either will but did acknowledge that both provided that Klara's estate was to be transferred into the Szanto Trust, and that both contained no contest clauses. Therefore, Peter sought confirmation that opposing respondents' petition would not constitute a will contest.

Peter alleged that he would not attack the validity of the Szanto Trust or of either of Klara's wills. Instead, he intended only to "test the sufficiency, as a matter of law . . . of the [petition]." However, at another point in his very confusing pleading, Peter stated that he "seeks to present this Court with other aspects of Klara Szanto's year 2000 Will which are in defiance of public policy, and hence void, as they apply to the Petition to Transfer Trust Asset." At another point, Peter argued that any challenge that he might make to the respondents' petition which proved successful would necessarily be for the betterment of Klara's estate and, therefore, could not be found to thwart Klara's testamentary intent.

Peter did not clearly articulate any specific ground for objecting to the respondents' petition. He argued instead that the petition was confusing because it contained ambiguous language and that it was deceptive because it did not disclose that, before the petition was filed, Victor obtained Paul's durable power of attorney. Peter questioned why this allegedly "crucial information" was kept from the court. Peter opined that, if assured his challenge would not result in a forfeiture, he could reveal other "ambiguity and deception" in the respondents' petition. Finally, Peter stated that if he was given a "no contest" declaration, he would challenge what he "believes, in good faith, to be the multitude of misrepresentation of Klara Szanto's intent in both putative wills."

E. *The Trial Court's Ruling*

The hearing on both petitions was held before Judge Foiles on July 7, 2006.

At the hearing, Peter stated that his opposition to respondents' petition, should he be allowed to file one, would be that respondents were attempting to make "an end run around the probate and administration" of Klara's will. Apparently, Peter was concerned that the real purpose of the respondents' petition was to obtain a ruling from the court that the 2000 will was valid. Peter claimed that an order granting the petition would necessarily show that the 2000 will was valid and that respondents would then "us[e] this Court's blessing to validate the Will that they have yet administered or seek some sort of authentication for."

Peter also questioned respondents' allegation that the only reason the Hillsborough property was transferred out of the Szanto Trust was to obtain refinancing. He argued that Klara kept meticulous diaries and that those diaries should be produced so Klara's real intent could be determined. Peter further argued that he wanted to oppose respondents' petition so that "I can make clear that we need to decide which one of the Wills we're working under. I need to prove up to the Court the fraud, the undue influence that was exerted on my mother to sign the 2000 will, to sign the 2005 Trust and to make the actual intent of my mother known to the Court."

Respondents argued that Peter's claim that respondents were trying to make an end run around the probate law was unfounded. Because the Hillsborough property was transferred out of the Szanto Trust to Paul and Klara as joint tenants, with a right of survivorship, Klara's share of the property passed directly to Paul and was not subject to probate. Respondents further argued that, to the extent Peter admitted he intended to attack his mother's stated intentions, his proposed opposition would clearly be a contest.

At the conclusion of the hearing, the court granted respondents' petition and denied Peter's petition without making a finding as to whether the latter constituted a will contest. Instead, the court denied the section 21320 petition on "procedural grounds."

An order granting respondents' petition and denying Peter's section 21320 petition was filed September 12, 2006. That order sets forth findings, including that (1) Paul and Klara transferred the Hillsborough property into the Szanto Trust on September 15, 2004; (2) Paul and Klara transferred the Hillsborough property out of the Szanto Trust to "Paul Szanto and Klara Szanto, Husband and Wife as Joint Tenants" on August 31, 2005; (3) "In compliance with the request of the mortgage company, title was changed to Joint Tenancy by Paul Szanto and Klara Szanto solely for the purpose of refinancing"; (4) the Hillsborough property is an asset of the Szanto Trust.

III. DISCUSSION

A. *Peter's Petition*

Peter contends his section 21320 petition for declaratory relief was erroneously denied. We review de novo the order denying Peter's petition. (*Hearst v. Ganzi* (2006) 145 Cal.App.4th 1195, 1209; *Estate of Davies* (2005) 127 Cal.App.4th 1164, 1173.)

Section 21320, subdivision (a), states: "If an instrument containing a no contest clause is or has become irrevocable, a beneficiary may apply to the court for a determination of whether a particular motion, petition, or other act by the beneficiary, including, but not limited to, creditor claims under Part 4 (commencing with Section 9000) of Division 7, Part 8 (commencing with Section 19000) of Division 9, an action pursuant to Section 21305, and an action under Part 7 (commencing with Section 21700) of Division 11, would be a contest within the terms of the no contest clause."

"[S]ection 21320 provides a safe harbor for beneficiaries who seek a judicial determination whether a proposed legal challenge would be a contest, and that is the only issue to be decided when such an application is made. [Citation.]" (*Estate of Davies, supra,* 127 Cal.App.4th at p. 1173.) The question whether an action constitutes a contest " 'within the meaning of a particular no-contest clause depends upon the circumstances of the particular case and the language used.' [Citations.] '[T]he answer cannot be sought in a vacuum, but must be gleaned from a consideration of the purposes that the [testator] sought to attain by the provisions of [his] will.' [Citation.]" (*Burch v. George* (1994) 7 Cal.4th 246, 254-255; see also *Estate of Coplan* (2004) 123 Cal.App.4th 1384, 1388.)[3]

"As a general rule, the decision about whether the beneficiary's proposed action would be a will contest may not involve a determination of the merits of the action itself, a rule that 'makes sense' because the summary safe harbor procedure could otherwise 'be used to allow the very form of challenge and protracted litigation the testator sought to prevent.' [Citation.]" (*Estate of Davies*, *supra*, 127 Cal.App.4th at p. 1173.) Furthermore, "specificity is important because the trial court must be able to determine from the section 21320 application whether the proposed action is entitled to safe harbor." (*Estate of* Rossi (2006) 138 Cal.App.4th 1325, 1334.)

These rules demonstrate that Peter failed to file a proper application for section 21320 declaratory relief and that the trial court properly denied it. As noted above, the only function of section 21320 is to permit a *beneficiary* to seek a judicial determination whether *a proposed legal challenge* would be a contest. (*Estate of Davies*, *supra,* 127 Cal.App.4th at p. 1174.) Indeed, by its express terms, this statute permits a beneficiary of an irrevocable will or trust to obtain a determination as to whether a "particular" motion, petition or other act would constitute a contest within the terms of the no contest clause in the irrevocable instrument with respect to which the petitioner is a beneficiary.

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[3] "Therefore, even though a no contest clause is strictly construed to avoid forfeiture, it is the testator's intentions that control, and a court 'must not rewrite the [testator's] will in such a way as to immunize legal proceedings plainly intended to frustrate [the testator's] unequivocally expressed intent from the reach of the no-contest clause.' [Citation.] (*Burch v. George*, *supra,* 7 Cal.4th at p. 255.)

In this case, Peter alleged he is a beneficiary of the Szanto Trust. However, the evidence before the court showed that Peter is not such a beneficiary.[4] Further, even if Peter could have proven otherwise, he did not seek a no contest finding with respect to the Szanto Trust. Instead, he attempted to obtain such a finding with respect to one or both of his mother's wills. Peter did not allege that he was a beneficiary under either the 1996 will or the 2000 will or that either will was irrevocable. Furthermore, Peter did not seek a declaration with respect to a "particular" motion, claim or other act. Instead, he essentially sought carte blanche to use the respondents' trust asset petition as a venue to challenge any conceivable action by Paul, Klara or Victor which related in any way to Klara's will(s) or the Szanto Trust. Contrary to Peter's contention on appeal, the lower court was not required to provide such a declaration.

As noted above, "specificity" is important so the court can determine whether the proposed action will constitute a contest. (*Estate of Rossi*, *supra*, 138 Cal.App.4th at p. 1334.) Indeed, it is considered "good practice" for a proposed pleading to be attached to or filed concurrently with the section 21320 application. (Ross, Cal. Practice Guide: Probate (The Rutter Group Rev. #1 2007) p. 15-40.6, ¶ 15:98.6a.) Here, we do not hold that Peter was required to submit a proposed opposition to the trust asset petition in order to obtain a safe harbor declaration. We do hold, however, that a court must be able to determine the substantive action the applicant intends to take. In this case, Peter's section 21320 petition was so vague and confusing that it simply was not possible to determine what substantive action Peter proposed to take.

For all these reasons, we hold Peter's petition was properly denied.

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[4] In their trust document, Paul and Klara provided that their assets were to be allocated among their children, identified Peter as one of their children, but directed that the share of their property allocated to Peter was to be distributed to Peter's children.

B. *The Trust Asset Petition*

Peter contends the respondents' trust asset petition should have been denied. It appears that his primary contention is that respondents erroneously relied on *Heggstad, supra,* 16 Cal.App.4th 943. Respondents characterized their lower court petition as a "*Heggstad* petition" and, on appeal, maintain that that case is authority for the lower court order granting their petition. We disagree.

The issue in *Heggstad* was whether the decedent had created a revocable living trust in real property. (16 Cal.App.4th at p. 947.) Prior to his death, the decedent had executed a trust instrument which named himself as the trustee and which identified all the trust property in a schedule which was attached to the trust instrument. The real property at issue was listed on the attached schedule. However, the decedent did not execute a grant deed conveying this property to himself as trustee of the revocable trust. (*Id.* at p. 946.) This court held that "a written declaration of trust by the owner of real property, in which he names himself trustee, is sufficient to create a trust in that property and that the law does not require a separate deed transferring the property to the trust." (*Id.* at p. 950.)

We confess that we are perplexed as to why respondents refer to their lower court petition as a "*Heggstad* petition." Respondents did not seek a ruling from the probate court as to whether a revocable trust in real property had been created. Indeed, there appears to be no dispute that the Szanto Trust was created, that the Hillsborough property was an asset of that trust, and, indeed, that Paul and Klara executed a deed transferring this asset to themselves as trustees of the Szanto Trust. The potential problem respondents addressed by their lower court petition was whether the Hillsborough property was still an asset of the Szanto Trust at the time of Klara's death in light of events that occurred after the revocable trust in real property was created. No comparable issue was presented to us in *Heggstad, supra*, 16 Cal.App.4th 943.

On appeal, respondents contend that *Heggstad* does support their claim that the Hillsborough property is part of the Szanto Trust. They reason that *Heggstad* holds that a settlor can establish a revocable trust in real property without executing a deed so long as he or she manifests trust intent by declaring him or herself trustee. Therefore, respondents argue, it necessarily follows that a settlor can include real property in a trust that has already been established simply by expressing an intent to do so.

Respondents misconstrue our holding in *Heggstad.* We found that a deed was not required in that case because relevant authority established that a *written declaration* of trust was a legitimate alternate method by which a settlor could manifest his intention to create a trust in his real property. (*Heggstad, supra*, 16 Cal.App.4th at p. 948.) Thus, to the extent *Heggstad* can be applied to a case in which a settlor has attempted to transfer real property into an already established inter vivos trust, our decision would require either a deed or a written declaration that the property was a trust asset. Nothing in *Heggstad* supports the notion respondents advance here, i.e., that the Hillsborough property can be declared an asset of the Szanto Trust simply upon a showing that Paul and Klara intended to, but never did, transfer the property back into the trust after the refinancing had taken place.

As we discussed in *Heggstad*, "[w]here the trust property is real estate, the statute of frauds requires that the declaration of trust must be in writing signed by the trustee." (16 Cal.App.4th at p. 948.) Respondents acknowledge this rule but find it does not undermine their request for relief because "[t]he trust instrument here was signed by Paul and Klara." Of course, though, that document was signed before Paul and Klara executed the deed transferring the Hillsborough property out of the Szanto Trust. There is no evidence, nor even a contention by respondents, that Paul and Klara made a written declaration of trust after they formally transferred the property out of their trust.

Therefore, *Heggstad* does not support a finding that Paul and Klara transferred the Hillsborough property into the Szanto Trust prior to Klara's death. Indeed, had the trial court made such a finding, we could not affirm it. But, as it happens, the court did not find that Paul and Klara transferred the Hillsborough property into their trust, nor did it rely on or even refer to *Heggstad.* The court simply found that the Hillsborough property is an asset of the Szanto Trust. We must, therefore, consider whether the record before us supports that conclusion.

The evidence presented below established that, at the time of Klara's death, Paul and Klara owned the Hillsborough property as "Husband and Wife as Joint Tenants." " 'A distinctive feature of joint tenancy, as opposed to other interests in land, is the right of survivorship. This means that when one joint tenant dies, the entire estate belongs automatically to the surviving joint tenant(s). [Citations.]' (*Grothe v. Cortlandt Corp.* (1992) 11 Cal.App.4th 1313, 1317.)" (*Estate of Mitchell* (1999) 76 Cal.App.4th 1378, 1385.) Therefore, one could argue that when Klara died, the entire Hillsborough property belonged "automatically" to Paul, the surviving joint tenant. Indeed, as noted in our factual summary, respondents made this argument at the July 7, 2006 hearing. Furthermore, in his appellate brief, Peter states his father is the "fee-simple-absolute owner" and the "sole owner" of the Hillsborough property.[5]

If Paul is the sole owner of the Hillsborough property, he had the authority to transfer that asset into the Szanto Trust. However, there is neither evidence nor even an allegation that Paul made such a transfer. Further, we must again conclude that the principles we discussed in *Heggstad, supra*, 16 Cal.App.4th 943, could not apply here. Arguably, the trust asset petition, which Paul verified, might constitute a written declaration of trust by the owner of the real property. However, Victor is now a co-trustee along with his father. In other words, this is not a case in which the owner of real property creates a trust in his own real property simply by declaring himself trustee of it. To accomplish a transfer of the Hillsborough property into the Szanto Trust, title to the property must be conveyed to both Paul *and* to Victor as trustees. There is no evidence in the record that such a conveyance occurred.

For all these reasons, we find that the respondents' petition should have been denied.

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[5] On appeal, respondents change their position and contend that the Hillsborough property may not have passed directly to Paul upon Klara's death because it may have been a community property asset notwithstanding the joint tenancy deed. Nothing we say in this opinion should be construed as resolving this issue which, as best we can determine, has not yet been properly raised in the lower court.

IV. DISPOSITION

The part of the probate court's order granting respondents' petition for an order confirming transfer of trust asset is reversed. The part of the order denying appellant's section 21320 petition is affirmed. The parties are to bear their own costs on appeal.

Haerle, J.

We concur:

Kline, P.J.

Lambden, J.

FILED

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2010 MAR 29 AM 11: 23

CLERK U.S. DISTRICT COURT CENTRAL DIST. OF CALIF. LOS ANGELES

United States District Court

Central District of California

Western Division - 312 N. Spring St., Los Angeles CA 90012

CV10 2263 • AHM (CWX)

USDC # ________

Peter Szanto, an individual, Plaintiff,

vs.

Honorable Charles Stevens Crandall, Judge of the California Superior Court.

and

Peter Kurt Peterson, Edward Donald Thirkell, Robert Samuel Lewin, Julia Eva Lingys, Kenneth Howard Horowitz, Katharina Nina Reynolds, all members of the State Bar of California.

Defendants.

All of the defendants are state actors.

**** JURY is REQUESTED ****

Civil Action for:

1. Deprivation of Civil Rights
2. Civil Conspiracy
3. Abuse of Judicial Process
4. Malicious Prosecution
5. Barratry
6. Subornation of Fraudulent Real Property Transfer
7. Defamation
8. Intentional Infliction of Emotional Distress

Plaintiff requests there be no magistrate assignment herein

A Federal Question Under 42 U.S.C.A. § 1983

Assigned to: Hon

EXHIBIT C

1. Plaintiff Peter Szanto is an individual, over 18 years of age and a citizen of California.
2. The Honorable Charles Stevens Crandall is Judge of the California Superior Court in San Luis Obispo County. Judge Crandall is a state actor who acted outside the bounds of his jurisdiction as a Judge. Judge Crandall's actions thereby caused deprivation of Szanto's civil rights by improper exercise of the privilege of judicial authority under color of law. Said judicial authority being created by the state of California. And therefore defendant Crandall is a state actor.
3. Defendants Peter Kurt Peterson, Edward Donald Thirkell, Robert Samuel Lewin, Julia Eva Lingys, Kenneth Howard Horowitz, Katharina Nina Reynolds are all members of the State Bar of California. And thereby are officers of the courts of California. And are therefore state actors. These defendants acted outside the bounds of their jurisdiction as court officers. These defendants abused and co-opted and debased their authority, duties and responsibilities for personal gain and used perjured and terroristic tactics against plaintiff in defiance of the limitations of their authority.
4. Jurisdiction is appropriate in California, because all parties to this action are California citizens. Jurisdiction is appropriate in this USDC division, because Judge Crandall resides here. Jurisdiction is appropriate in this Court because all of the matters occurred in California. Jurisdiction is appropriate because all of the defendants

are officers of the state courts of California and therefore it would be improper to ensue in the forum wherein the defendants are officers.

5. The issues herein, among others, are the Federal questions relating to: 1) intentional deprivation by officers of the courts of California of plaintiff's civil rights by the use of procedure and rulings based on non-existent laws to thwart Peter Szanto's attempts to pursue redress regarding the estate of his late parents as well as creditor claims against his late parents estate not covered by any testamentary provisions; 2) deprivation of plaintiff's civil rights by officers of the courts of California who intentionally abused and misused judicial process in manners never contemplated by legislation so that plaintiff has been unable to redress his valid grievances and claims as allowed by law; 3) defendants have brought at least three original actions in the courts of California to stymie plaintiff's ability to redress his probate / trust grievances.

***** All references herein to the trust are intend to reference the Paul and Klara Szanto Revocable Trust of 1991. *****

6. The fundamental facts of the case are these. Plaintiff's son Phillip Szanto was born in 1984. Sometime in 2001, while still a minor, Phillip began a close personal relationship with defendant Robert S. Lewin, a man 41 years his senior. It was not until 2006, that plaintiff

became aware of the entire depth, breadth and extent of the relationship between the two men.

7. In 2003, Phillip with the assistance of Mr. Lewin filed the first of at least 3 complaints against plaintiff [EXHIBIT A].

8. On July 25, 2005, Phillip, represented by Mr. Lewin filed a complaint against his father, Peter Szanto [EXHIBIT B]. Filing of the complaint was contrary to the Rules of Professional Conduct Rule 4-210(A) which prohibits attorneys from paying the personal expenses of clients. Lewin's admission, under oath, that he paid all of Phillip's expenses is at [EXHIBIT C-page 5:22-24]: "Since Phillip left his father's house, my wife and I have paid ALL of his support for food, clothing, shelter, travel entertainment, etc."

9. To increase Peter Szanto's costs of defending himself, Mr. Lewin, impermissibly and contrary to law, split the cause of action and brought a supplementary action at the Hemet Courthouse in Riverside County. [EXHIBIT D]. The underlying theory of that case focused on a letter of conciliation and love Peter Szanto had written to his son. But the truth was that the Hemet Courthouse is 5 miles from the home Phillip and Mr. Lewin share, but 120 miles from Peter's residence. Defendant Lewin mocked Peter Szanto when he was informed that Peter Szanto's counsel charged portal to portal fees for Hemet appearances. Lewin laughed about the extra anguish that he was able to inject into the series of cases merely by using his position as an officer of the court to divide one action into two. [See

allegations regarding intentional infliction of emotional distress.]

10. Trial was scheduled in Hemet , but when Phillip and Mr. Lewin failed to appear for that trial, the matter was dismissed [EXHIBIT E].

11. The fundamental effort in the **cases** of Phillip Szanto vs. Peter Szanto, was not merely to obtain money for non-existent wrongs, imagined harm and fabricated causes of action but also to bog Peter Szanto down in a series of cases that would completely eviscerate and destroy his finances as well as distract Peter Szanto from trust changes that his siblings and defendants had secretly undertaken. And as has been shown in the delay defendants were able to achieve, make Peter Szanto's ability to protect his rights in the estate of his parents more difficult to have adjudicated.

12. On May 17, 2006, defendant Horowitz began an action in San Mateo County [EXHIBIT F] attempting an end-run around California probate law.

13. When Peter Szanto challenged Horowitz's legal trickery, defendants Thirkell, Lewin, Lingys joined the case.

14. Of most profound evidence regarding the intention of defendants to abuse and misuse the laws is that their action was predicated on the principle established in *Estate of Heggstad* (1993) 16 Cal.App.4th 943. Defendant Thirkell was lead counsel on the *Heggstad* case which established principles for trust transfer. And therefore should have known, more so than anyone else, in deepest particularity the instances in which *Heggstad* relief was available as a matter of law.

15. On appeal [EXHIBIT G]. The Court of Appeal recognized that there was no basis at law for avoidance of probate in this case [EXHIBIT G – p.9 – 3rd ¶]; "We confess that we are perplexed as to why (putative trustees) refer to their lower court petition as a '*Heggstad* petition'."

16. During the pendency of the appeal [EXHIBIT G], after 3 ½ weeks of jury trial, the jurors completely exonerated Peter Szanto in the Orange County action [EXHIBIT H].

17. Plaintiff's defense of the entirety of the actions [EXHIBITS A, B, D] cost well over $1,450,000.00 in attorneys' fees, costs and lost income.

18. Subsequently, plaintiff lost additional income while defendant Lewin unnecessarily appealed the Orange County case before dismissing the matter with prejudice [EXHIBIT I].

19. During the pendency of [EXHIBIT G] plaintiff and his father (Paul Szanto) signed a written agreement to resolve their disputes regarding various real property projects and transactions they had undertaken together and which had been mismanaged into foreclosure by Peter's siblings. The agreement between Peter and his father became a lien against real property owned by Paul Szanto. Disputes arose regarding that lien.

20. On October 30, 2007 Peter Szanto began an action in San Luis Obispo County, [EXHIBIT J]. That case was assigned to defendant Crandall in his capacity as a judge of the California Superior Court.

21. California Code of Civil Procedure § 405, et seq, allows a judge to sign a Notice of Pendency of Action on behalf of a *pro se* litigant. Judge Crandall signed such a notice on behalf of Peter Szanto [EXHIBIT K]. CCP § 405 required Judge Crandall to determine the likely validity of plaintiff's claim and the fact that the *prima facie* facts warranted the recordation of a *lis pendens*. Judge Crandall made that determination that Peter Szanto would likely prevail and that the claims constituted a lien against real property by signing the notice.

22. Defendants Peterson and Reynolds represented Paul Szanto in [EXHIBIT J]. During eight months, defendants brought three separate vexatious litigant motions against Peter Szanto. All the motions were denied or withdrawn.

23. However, the motions did have the effect desired by defendants of engendering prejudice and bias in defendant Crandall. In [EXHIBIT L] defendant Crandall not only expunged the *lis pendes* he himself had determined and adjudged appropriate and granted, but awarded attorney's fees to defendants Peterson and Reynolds and against plaintiff, even though plaintiff's sole act had been the presentation of information and evidence for Judge Crandall's sole and exclusive determination. Effectively, plaintiff's civil rights (the statutory right to have a judge authorize a *lis pendes* on his behalf) were taken from him by defendants false representations regarding vexatiousness, forged declarations from Paul Szanto, failure to participate in discovery and defendant Crandall's intentional acts

that exceeded his jurisdiction (awarding attorneys' fees against plaintiff on the basis that Crandall's own grant of a *lis pendes* was in sanctionable against plaintiff). In effect, plaintiff was ordered to pay for having followed the rules, because Judge Crandall issued the *lis pendens* after Peter Szanto made a request that Judge Crandall could have denied. That is, CCP 405 makes the filing of a *lis pendes* the exclusive prerogative of the judge *vis a vis pro se* litigants. Peter Szanto merely asked for judicial review of his request – Judge Crandall approved that request. Subsequently Judge Crandall awarded attorneys fees against Peter Szanto, even though the entirety of the decision and act were exclusively Judge Crandall's.

24. Subsequently, Crandall overlooked the fact that in the itemization of attorney's fees defendant's Peterson and Reynolds submitted, sought fees for those periods of time during which defendants had previously claimed lack of service !! IE, they claimed lack of of service, but sought attorney's fees for that period of time during which they claimed not to have notice of a case on which they were actively working and seeking recompense.

25. After the San Luis Obispo action was duly served, defendant Horowitz undertook facilitation of an improper transfer of Paul Szanto's assets, under the guise of a durable power of attorney [EXHIBIT M] so as to avoid all possibility of having to pay upon Peter Szanto's potential claim in the San Luis Obispo action. That transfer of assets was completed by way of a deed of trust that

was likewise entered into to avoid plaintiff's claims [EXHIBIT N]. The deed of trust was improperly entered into during the pendency of matters regarding that property in the Court of Appeal [EXHIBIT G]. Proceedings in the Court of Appeal, as a matter of law, stay all transfers regarding property that is the subject of the appeal.

26. After prevailing in the Court of Appeal, plaintiff undertook to continue his trust challenge [EXHIBIT O]. However, that effort was thwarted by defendants Horowitz, Thirkell and Lingys' subterfuge.

27. Defendants' stratagem was as follows: when the San Mateo action [EXHIBIT F] began, defendants claimed that the trust's situs of administration was Tehama County [EXHIBIT P].

28. Two court days before the trust hearing in Tehama County defendants changed the situs of trust administration to San Mateo County [EXHIBIT Q].

29. As part of that change in situs of trust administration, defendants brought a motion for change of venue, which was only granted after several months. However, it was not until defendants surprise production of [EXHIBIT Q] that the Tehama court changed venue. Defendants entire effort was focused on making Peter Szanto appear to be a ridiculous litigant who had foolishly overlooked venue requirements. When, in fact, the document regarding the change of venue was never served on plaintiff and surfaced only surreptitiously when defendants' change of venue motion was going to be denied.

30. After plaintiff's trust transfer safe harbor and trust challenge were calendared, defendants brought another vexatious litigant motion in San Mateo [EXHIBIT R]. The hearing of that matter is calendared for April 1, 2010. As with the previous vexatious litigant applications, defendants' current motion is filled with statements known to be false (because they are *res judicata* from previously decided cases) and matters the intentional false revelation of which are not covered by the Civil Code § 47, because they are communicated with malice and intent falsely to represent the truth of the matters asserted.

First Cause of Action for Deprivation of Civil Rights

31. The elements of a Civil Actions under 42 USC 1983 have two essential proof requirements: (1) that defendants acting under color of state law committed the conduct at issue, and (2) that the conduct deprived the claimant of some right, privilege, or immunity protected by the Constitution or laws of the United States.

32. Here, plaintiff alleges that defendants' intentional conduct, while acting under color of their authority as officers of California courts, has deprived him of his ability to redress his grievances regarding his parents' estate / trust as guaranteed by *U.S. Constitution*, Amendment 1.

33. Defendants acts focused on making false representations to various courts so as to obtain an unfair and improper advantage which they could not otherwise have obtained. Defendants false representations have been the sole and only reason for the delays that have occurred in Peter Szanto's efforts to bring matters regarding his parents' estate / trust to a fair and complete hearing. The essential substance of plaintiff's claim is that by deprivation of plaintiff's rights, defendants have prevented plaintiff from fully litigating his claims regarding his parents' estate.

34. 42 USC 1983 creates a cause of action based on personal liability and predicated upon fault; thus, liability does not attach unless the individual defendant caused or participated in a constitutional deprivation. Plaintiff alleges that the defendants, jointly and severally, used their status, standing and privilege as officers of the courts of California to work a deprivation of plaintiff's fundamental rights of access to courts to redress his grievances.

35. Had defendants not been able to use the color and prestige of their office to obtain special treatment before the courts, they would have been unable to work that deprivation.

36. For example, defendants used their position as officers of the courts to bring actions and motions that had no reasonable basis at law – knowing that, as officers of the court, their tactics against a *pro se* litigant would be given deference that they were not otherwise entitled to. Defendants brought a *Heggstad* petition knowing it was

improper. That same *Heggstad* petition was never signed by any of the attorneys presenting that motion as required by law. Defendants have brought 5 unsuccessful vexatious litigant motions (prior to the one calendared for April 1, 2010), knowing them to be inappropriate and unwarranted; but knowing that the shock value is sufficient to bias courts against plaintiff.

37. Defendants have abused the law of proceeding *in forma pauperis*, which is intended to be confidential, by seeking and obtaining copies of plaintiff's *in forma pauperis* applications and using that as argument in their pleadings; even though prohibited by CRC 3.50

38. Defendant Crandall knew that *pro se* litigants have the right to seek original judicial review of whether the court will grant them a *lis pendens*. Crandall, solely by his own decision making and judgment, granted plaintiff a *lis pendens*. After seven months of unrelenting and scurrilous attack and accusations of improper conduct by the other defendants, Crandall retracted his own personal decision about the *lis pendens*, changed his mind and fined plaintiff for having sought Judge Crandall's judicial determination as allowed by law in the first instance.

39. Defendant Thirkell's principle tactic, because of his long standing membership as an officer of the courts of California, has been to claim lack of service as to nearly every document that has been duly and properly served on him. Judicial officers, have invariably believed Thirkell's argument of lack of service, without considering –

the more focused question of how Thirkell happens to be in court at the proper time and place to make that argument that he had not obtained service. The principle rules on-point: *Wilson v. Sunshine Meat & Liquor Co.* (1983) 34 Cal.3d 554 and *Alioto Fish Co. v. Alioto* (1994) 27 Cal.App.4th 1669, 1690 establish that the presence of counsel in court waives notice. In *Alioto,* the court held that appearance waived any and all objection to defects in service.

40. Plaintiff reserves right to supply further examples of defendants' civil rights deprivations.

41. Ultimately, defendants' actions were focused solely and entirely on using improper tactics and strategies to deny plaintiff the opportunity to have this matter adjudicated upon its merits. After nearly seven years since the start of the first action brought by defendants, plaintiff has been unsuccessful in bringing the true facts of his case to hearing, while bogged down with ancillary actions that defendants have brought solely to distract from the decisive issues of the case.

42. By these actions of the defendants Peter Szanto was injured in mind, body and financially and lost use of his property, paid out medical expenses, suffered general damages, suffered property damage, lost earning capacity, suffered consequential and expectation damages in amounts to be shown by proof.

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Second Cause of Action for Civil Conspiracy

43. Elements constituting civil conspiracy and liability require a meeting of the minds on the unlawful object or improper course of action. The meeting of the minds need not be a verbal affirmation. In this series of cases, defendants meeting of the minds can be inferred by circumstances: that they knowingly brought various actions to thwart, stymie and distract plaintiff from being able to pursue the merits of his claims. Defendants tactics and stratagems were illegal because they deprived Peter Szanto of civil rights in a manners that would never have been attempted (as described supra) or have been permitted (facts supra) if defendants were not officers of the courts of California and their actions presumed circumspect *vis-à-vis* a *pro se* litigant.
44. Fundamentally, it is not the conspiracy itself that gives rise to the cause of action; it is the torts committed and the wrongs done in furtherance of that civil conspiracy that do.
45. Here plaintiff's torts are enumerated in the other causes of action as well as the factual statement, supra.
46. By these actions of the defendants Peter Szanto was injured in mind, body and financially and lost use of his property, paid out medical expenses, suffered general damages, suffered property damage, lost earning capacity, suffered consequential and expectation damages in amounts to be shown by proof.
47. Plaintiff reserves right to amend this conspiracy cause of action.

THIRD CAUSE of ACTION
for Abuse of Judicial Process

48. The two main elements of a cause of action for abuse of process are; "an ulterior purpose, and second, a willful act in the use of the process not proper in the regular conduct of the proceeding." *Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.* (1986) 42 Cal.3d 1157, 1168. "Process is action taken pursuant to judicial authority.... [¶] Merely obtaining or seeking process is not enough; there must be subsequent abuse, by a misuse of the judicial process for a purpose other than that which it was intended to serve." *Adams v. Superior Court* (1992) 2 Cal.App.4th 521, 530-1.

49. As recited in the factual statement of this case, defendants' ulterior purpose was to crush plaintiff's desires for a fair hearing regarding his parents' estate / trust irrespective of truth, law or justice.

50. And second, defendants' willful acts were the improper use of the process of the court in the regular conduct of the proceeding: for example – 1. knowingly misstating the rules of *Heggstad* – 2. bringing multiple vexatious litigant motions solely for the improper purpose of biasing courts against plaintiff – 3. improperly splitting causes of action to harass and annoy plaintiff and to drive-up his litigation expenses – 4. making false statements of material fact known to be false that are unprivileged – 5. bringing actions against plaintiff solely for the purpose of driving him into financial ruin so

that he is unable to obtain the redress of his grievances by being represented by counsel

51. By these actions of the defendants Peter Szanto was injured in mind, body and financially and lost use of his property, paid out medical expenses, suffered general damages, suffered property damage, lost earning capacity, suffered consequential and expectation damages in amounts to be shown by proof.

52. Plaintiff reserves right to amend this list regarding abuse of process.

Fourth Cause of Action for Malicious Prosecution

50. The necessary elements of an action for malicious prosecution are: (1) a judicial proceeding favorably terminated; (2) lack of probable cause; and (3) malice. *Jaffe v. Stone* (1941) 18 Cal.2d 146 accord *Ferraris v. Levy* (1964) 223 Cal.App.2d 408.

52. As outlined above, three judicial actions [EXHIBITS A, B, D] prosecuted by the defendants were terminated in favor of Peter Szanto.

53. The facts and evidence presented in all three cases showed that there was no probable factual basis or reasonable / just cause for any of those actions on any basis or factual scenario whatsoever.

54. As the facts will show all three actions were undertaken by the defendants with the malicious intention of depriving Peter Szanto of the benefit of his parents' estate / trust by wasting time and money contesting defendants' frivolous action against him.

55. By these actions of the defendants Peter Szanto was injured in mind, body and financially and lost use of his property, paid out medical expenses, suffered general damages, suffered property damage, lost earning capacity, suffered consequential and expectation damages in amounts to be shown by proof.

56. Plaintiff reserves right to amend this cause of action for malicious prosecution.

Fifth Cause of Action for Barratry

57. Barratry is the tort of frequently exciting and stirring up suits and quarrels. *Rubin v. Green* (1993) 4 Cal.4th 1187, 1190. In this case defendants Peterson, Thirkell, Lewin, Lingys, Horowitz, and Reynolds have taken the Szanto family series of lawsuits as their own personal litigation jackpot from which they mine fees and income while knowing that the family could have settled their trivial disagreements 5 years ago !!! quarrel

58. The minor Szanto family squabble could easily have been solved without legal intermeddling, but has persisted because defendants improperly keep the family members involved in litigation rather than attempting to obtain conciliation or allowing the matter to come to trial.

59. The elements of barratry are the improper prosecution of lawsuits and legal actions without any basis or foundation simply to generate

legal fees.

60. Here, defendants have been defeated on three separate actions they have pursued against Peter Szanto. Defendants prosecution of an improper *Heggstad* application was reversed on appeal. Five vexatious litigant motions have been thrown against Peter Szanto without success

61. This series of dismal failure by defendants speaks for itself as cases brought solely to generate fees.

62. Because of the various actions by the defendants Peter Szanto has been injured in mind, body and financially and lost use of his property, paid out medical expenses, suffered general damages, suffered property damage, lost earning capacity, suffered consequential and expectation damages in amounts to be shown by proof.

63. Plaintiff reserves right to amend this cause of action for barratry.

Sixth Cause of Action for Subornation of Fraudulent Real Property Transfer

64. The sole element of the cause of action for fraudulent transfer is the intentional transfer of property made with the actual intent to hinder, delay or defraud a creditor. The law of such fraudulent transactions is at Civil Code § 3439 et seq.

65. As described above, during the pendency of the San Luis Obispo action, defendants intentionally suborned the improper transfer of

property even though a *lis pendens* gave them actual notice that a claim was being made and prosecuted against that property and any transfer with out court permission was contrary to law. As well, the pendency of the Court of Appeal case [EXHIBIT G] barred transfer.

66. Because of these actions by the defendants Peter Szanto was injured in mind, body and financially and lost use of his property, paid out medical expenses, suffered general damages, suffered property damage, lost earning capacity, suffered consequential and expectation damages in amounts to be shown by proof.

67. Plaintiff reserves right to amend this cause of action for fraudulent transfer.

Seventh Cause of Action for Defamation

68. The essential elements to sustain a cause of action for defamation are: 1) a material statement of fact that is false; 2) no privilege that protects that statement; 3) a natural tendency of that statement to injure or damage plaintiff.

69. Here, defendants have brazenly uttered statements which they knew not only to be false, but also which had been proven in various courts of law to be false – and which were *res judicata* as applied to the same Szanto defendants in the various cases in the Szanto series of cases.

70. For example, the fact that Peter Szanto did not sue himself in Riverside was proven in 2007, 2008 and 2009. Nonetheless defendants had the temerity to make that same allegation, known to be false, in 2010. No litigation privilege protects this utterance, because the utterance was made with intentional malice.

71. Likewise, allegations that plaintiff's former wife was improperly served during their dissolution action in 2000, were heard and reheard by judicial officers in 2004, 2005, 2007 and 2008. That issue too is *res judicata*. Nonetheless, in 2010, defendants made that false claim again under color of their authority as officers of the courts of California and under color of the litigation privilege, even though their charges regarding the dissolution action are known to false, have previously been decided by various courts and are *res judicata*.

72. Because of these actions by the defendants Peter Szanto was injured in mind, body and financially and lost use of his property, paid out medical expenses, suffered general damages, suffered property damage, lost earning capacity, suffered consequential and expectation damages in amounts to be shown by proof.

73. Plaintiff reserves right to amend this defamation cause of action.

Eighth Cause of Action for Intentional Infliction of Emotional Distress

74. The elements of the tort of intentional and reckless infliction of emotional distress are:

"(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965,1001.

75. The intentional conduct of the defendants related herein is the fabrication and prosecution of three separate malicious court actions against Peter Szanto. Likewise, it is the defendants prosecution of motions and petitions known to be without legal foundation, the legal basis for which were known to be false. In the midst of seeking unjustly to enrich themselves by various meritless and contrived actions defendants knew to a reasonable certainty that their reckless acts against Peter Szanto would inflict grievous harm upon and cause Peter Szanto extreme emotional distress, shame and depression.

76. As a matter of fact, the defendants simply disregarded the most basic emotions of human decency for the sake of greed and their gluttonous, ravenous desire for mere money.

77. Because of these actions by the defendants Peter Szanto was injured in mind, body and financially and lost use of his property, paid out medical expenses, suffered general damages, suffered property damage, lost earning capacity, suffered consequential and expectation damages in amounts to be shown by proof.

78. Plaintiff reserves right to amend this cause of action for intentional infliction of emotional distress.

EXEMPLARY DAMAGES

(As to all defendants.)

79. ¶¶ 1-78 are incorporated here as though fully set forth at this point. Peter Szanto alleges further damages against all the defendants that they are guilty of fraud, oppression and malice.

79. Malice means conduct by defendants carried out in conscious disregard of the rights of plaintiff. Here, defendants have pursued contrived actions, motions and petitions in conscious close the eyes to of truth and the law and thereby disregarded their legal obligations not to pursue actions they know to be false.

80. Oppression is despicable conduct that subjected plaintiff to cruel and unjust hardship in conscious disregard of plaintiff's rights. Here that despicable conduct was pursuit of legal actions known to be false and contrived – pursued with wanton disrespect for plaintiff's rights.

Thereon, Peter Szanto seeks a further award commensurate to the harm caused by defendants as shall be shown by proof.

Prayer

Plaintiff seeks $2,000,000 damages

Plaintiff seeks an award commensurate with the harm and damages which will be shown by proof. Plaintiff also seeks an award of additional damages to make an example out of defendants such that further acts as described herein will never again be attempted. And plaintiff prays for such further relief as this Court may deem just and equitable.

VERIFCATION

As to all of the matters stated herein, I declare that I personally know them to be true, or that I declare them to be true based on my personal information and belief that they are true.

Dated ______________________ Peter Szanto

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

In re the Matter of THE PAUL and KLARA SZANTO REVOCABLE TRUST dated March 19, 1991 restated on October 5, 2005	CASE NO. 115212 **NOTICE OF MOTION TO DEEM PETER SZANTO A VEXATIOUS LITIGANT AND PROHIBIT PETER SZANTO FROM FILING NEW LITIGATION IN PROPRIA PERSONA WITHOUT LEAVE OF COURT** Date: April 1, 2010 Time: 9:00 a.m. Dept: 24 Judge: Stephen M. Hall

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT, at 9:00 a.m. on April 1, 2010, or as soon thereafter as the matter may be heard at the Southern Branch of Superior Court, 400 County Center in Redwood City, California, before the Honorable Stephen M. Hall in Department 24, Petitioner, Respondent and Moving Party ANTHONY SZANTO as Trustee for THE PAUL and KLARA SZANTO REVOCABLE TRUST dated March 19, 1991 restated on October 5, 2005, will move this Court as follows:

(1) For an order deeming Peter Szanto a vexatious litigant pursuant to California Code of Civil Procedure Sections 391(b)(1) and 391(b)(3); and

(2) For an order prohibiting Peter Szanto from filing new litigatio

EXHIBIT D

without leave of the court pursuant to California Code of Civil Procedure Section 391.7.

Said motion will be made on the grounds stated above and will be based upon this notice, the memorandum of points and authorities, the request for judicial notice, the declarations of K. Nina Reynolds, Phillip Szanto, Victor Szanto, Evye Szanto and Ellen Szanto, all of which are served and filed herewith, as well as the arguments of counsel at the hearing of this matter.

Dated: March 6, 2010

PETERSON MARTIN & REYNOLDS LLP

By ____________________
K. Nina Reynolds
Attorneys for Petitioner, Respondent and Moving Party ANTHONY SZANTO as Trustee for THE PAUL and KLARA SZANTO REVOCABLE TRUST dated March 19, 1991 restated on October 5, 2005

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